

**CITY OF NEWTON  
PURCHASING DEPARTMENT**

***CONTRACT FOR SENIOR SERVICES***

**PROJECT MANUAL:  
NEWTON SENIOR CENTER  
FITNESS PROGRAMS**

**AEROBICS**

**MUSCLE CONDITIONING**

**YOGA (Chair & Mats)**

***INVITATION FOR BID #09-49***

**November 2008**

**David B. Cohen, Mayor**

**CITY OF NEWTON**  
**PURCHASING DEPARTMENT**  
**INVITATION FOR BID #09-49**

The City of Newton invites sealed bids from Contractors for

**SENIOR CENTER FITNESS PROGRAMS**  
**(Aerobics, Muscle Conditioning, Yoga [chair & mats] )**

A **Pre-bid** conference will be held: **9:30 a.m., December 8, 2008** @ front lobby, Newton Senior Center, 345 Walnut St.

**Bids** will be received until: **9:30 a.m., December 29, 2008**  
at the Purchasing Department, Room 204, Newton City Hall, 1000 Commonwealth Ave., Newton, MA 02459. Immediately following the deadline for bids all bids received within the time specified will be publicly opened and read aloud.

**All Bids must be submitted with one Original and one Copy.**

Contract Documents will be available online at the City's website: [www.ci.newton.ma.us/bids](http://www.ci.newton.ma.us/bids) or for pickup at the Purchasing Department after **10:00 a.m., December 1, 2008.**

There will be no charge for contract documents.

Multiple awards are possible. Award will be made to the bidder with the lowest responsive and responsible bid for each individual line item. Bidder's are not required to bid on all line items, only those items they are certified and qualified to teach.

The term of this contract shall extend from **March 1, 2009** through **June 30, 2010**, with the option, at the City's sole discretion, **to extend for 1 additional 12 month terms (July 1, 2010 - June 30, 2011)** with no change to the contract price and terms and conditions. Each option to renew shall be subject to appropriation and/or availability of funding.

**Bidders must hold current required certifications and present them with bid in addition to other requirements.**

Bid surety is **not** required for this project.

All bids are subject to the provisions of M.G.L. Chapter 30B. The City of Newton will reject any and all bids when required to do so by the above referenced General Laws. In addition, the City of Newton reserves the right to waive any informalities in the bidding and to reject any or all bids, if it be in the public interest to do so.

CITY OF NEWTON

Re Cappoli  
*Chief Procurement Officer*

December 1, 2008

## **GENERAL CONDITIONS OF THE CONTRACT FOR NON-TECHNICAL SERVICES**

The City of Newton, herein referred to as the City, does hereby establish the following General Conditions, applicable to this Invitation for Bids and any subsequent purchase order, work order, shipping order or contract resulting therefrom.

### **1.0 SCOPE OF SERVICES**

- 1.1 The Contractor agrees to furnish all labor, materials, equipment and insurance necessary to perform and fully complete, in every respect, within the time frame herein specified, all work (hereinafter referred as the Services) described in the Project Manual.
- 1.2 The Contractor shall not make any changes in the scope of Services without the prior written consent of the City. The Contractor shall make reasonable revisions or corrections, within the scope of Services, to any work performed until submitted in a form acceptable to the City.
- 1.3 The City reserves the right to alter, add to or reduce the Services by delivering to the Contractor written notice specifying the nature and extent of such alteration, addition or reduction. Such notice shall be effective upon the later of actual receipt by the Contractor or upon the date given in such notice. No addition to the Services shall be made unless the City and the Contractor have agreed to such increase in writing.

### **2.0 CONTRACT TERM**

- 2.1 The obligations of the Contractor identified herein shall commence upon execution of the City-Contractor Contract and shall continue in full force and effect for the duration of the contract term as identified in the Project Manual. The contractor shall commence the performance of services under this contract promptly upon receipt of the City's Notice to Proceed in accordance with the provisions identified in the Project Manual.
- 2.2 In the event the term of this contract exceeds a period of one year and notwithstanding any provision to the contrary herein, the City shall cancel this contract in the event that funds are not appropriated or otherwise made available to support continuation of performance by the Contractor in any fiscal year succeeding the first year.

### **3.0 EXECUTION**

- 3.1 All work required hereunder shall be performed as promptly as possible, and in any event within the time herein set forth, and such work shall be subject to approval and acceptance by the City, but such approval and acceptance shall not relieve the Contractor from the obligation to correct any incomplete, inaccurate or defective work, all of which shall be promptly remedied by the Contractor on demand, without cost to the City. The Contractor shall obtain all the required licenses and permits for the work herein described.
- 3.2 The Contractor shall conform to all determinations and directions of the City concerning the Contractor's delivery of services in the event of inclement weather, equipment failure, picket lines on City property, or labor strikes by the contractor's employees.

### **4.0 COMPENSATION**

- 4.1 The City shall pay the Contractor for services rendered under this contract in accordance with the amount(s) set forth in the Contractor's General Bid Form and pursuant to the provisions contained in the Project Manual.
- 4.2 Notwithstanding anything to the contrary contained in the Contract, the City may withhold any payment to the Contractor hereunder if and for so long as the Contractor fails to perform any of its obligations hereunder or otherwise is in default under this Contract including, without limitation, any failure to perform Services in full accordance with the amount sufficient in the reasonable opinion of the City to cure any such default or failure of performance by the Contractor.
- 4.3 In no event shall the City be required to pay any amounts for work deemed by it to be unacceptable, or which are otherwise disputed. In the event the City disputes any such amounts invoiced, it shall pay all amounts not in dispute and notify the Contractor in writing of the amounts disputed and the reasons therefor.

4.4 No payment made shall constitute or be construed as final acceptance or approval of that part of the Services to which payment relates, or relieve the Contractor of any of its obligations outlined in this Contract. Further, the City shall not be deemed, by virtue of making payments to the Contractor hereunder, to have released the Contractor from any claim or liability, or to have waived any action arising out of the breach of this Contract by the Contractor.

#### 5.0 REPORTS AND DRAWINGS

When the Contractor has been paid for the Services performed by him or her, all reports, drawings, and other material furnished to the City shall become the City's property and may be used by the City (or such parties as the City may designate) thereafter in such manner and for such purposes as the City (or such parties as the City may designate) may deem advisable, without further employment of or additional compensation to the Contractor. The Contractor shall not release or disclose any report, drawing, or other material furnished to the Contractor by the City in connection with the performance of the Contractor's Services

#### 6.0 CONTRACTOR'S ACCOUNTING RECORDS

The Contractor shall keep records pertaining to Services performed (including complete and detailed time records) on the basis of recognized bookkeeping practices, generally accepted accounting principles, and in accordance with such reasonable requirements to facilitate audit as the City may provide. All records shall be available to the City or its authorized representatives for review and audit during normal business hours.

#### 7.0 ASSIGNMENT/SUBCONTRACTING

The Contractor agrees that he will not sell, assign or transfer this Contract or any part thereof or interest therein without the prior written consent of the City.

#### 8.0 REMEDY FOR DEFAULT

If the Contractor, in the sole judgment of the City, shall violate or fail properly to comply with or perform in any material respect any condition, provision, or warranty hereof, the City shall have the right by prior written notice to the Contractor to have the services called for hereby otherwise performed, and/or to terminate this contract without prejudice to any other rights or remedies of the City under this contract. The Contractor shall pay any excess in the City's cost to so procure the services and any related goods, supplies, materials or equipment. In addition, and without limiting any other remedies available to the City, the Contractor shall be liable for all losses, costs and expenses incurred by the City which result from the Contractor's noncompliance.

#### 9.0 SUSPENSION OR TERMINATION

9.1 The City shall have the right, upon seven (7) days written notice to the Contractor so stating, to terminate, suspend, or postpone this contract in whole or in part for any reason deemed by the City to be in the public interest. Any such termination, suspension, or postponement shall not give rise to any cause of action for damages against the City. In the event that the City postpones or suspends the Services, the Contractor's time for performance of the Services shall be extended for a period equal to the period of such postponement or suspension. In the event of termination, suspension or postponement, the City shall pay: (a) for services and any related goods, supplies, materials and equipment furnished up to the time of termination, suspension, or postponement at the contract price upon delivery; (b) for work in process in the amount of the Contractor's cost, determined in accordance with ordinary accepted accounting practices, up to the time of termination, suspension, or postponement; and (c) for raw materials purchased by the Contractor as of the date of termination, suspension, or postponement and which are noncancelable at the Contractor's actual cost plus reasonable handling charges, but only to the extent that such raw materials were purchased in reliance upon this contract and are useful solely with respect to this contract.

9.2 Upon receipt of a notice of termination, suspension, or postponement the Contractor shall immediately cease all work hereunder and cancel all orders placed with respect to this contract. The Contractor's failure to so cancel shall relieve the City of the obligations of paragraph 10.1 above.

9.3 The City may postpone, suspend or terminate the Services immediately, by notice, hand delivery or certified mail, if the Contractor violates any of the provisions of this Contract, or fails to perform or observe any of the terms, covenants or conditions of this Contract, or abandons in whole or in part its Services, or becomes unable to perform its Services.

9.4 In the event of termination of this Contract, the Contractor shall promptly deliver to the City all documents, work papers, calculations, computer programs, data, drawings, plans, and other tangible work product, or materials pertaining to the Services performed under this Contract to the time of termination.

#### 10.0 NOTICE

Any action, notice or request required to be taken, given or made by City or the Contractor hereunder may be taken, given or made only by those persons identified for that purpose on the Contract Form. All notices required to be given hereunder shall be deemed properly given if personally delivered, or if mailed by registered or certified mail, postage prepaid addressed to the address and officer identified on the Contract Form.

#### 11.0 PROTECTION OF PROPERTY

The Contractor shall take all reasonable precautions to prevent damage to property, visible and concealed, and shall restore to substantially the same condition existing prior to the Contractor's entry any disturbance or damage to property caused by the Contractor or any person acting under its control.

#### 12.0 INSURANCE REQUIREMENTS

12.1 The Contractor shall provide insurance coverage as listed below. This insurance shall be provided at the Contractor's expense and shall be in full force and effect during the full term of this Contract.

##### WORKER'S COMPENSATION

Worker's Compensation: as required by Massachusetts General Law.

##### COMMERCIAL GENERAL LIABILITY

Personal Injury \$100,000 each occurrence  
\$1,000,000 aggregate

12.2 The City shall be named as additional insureds on the Contractor's Liability Policies.

12.3 The Contractor shall not commence the work until proof of compliance with this Section has been furnished to the City by submitting one copy of a properly endorsed insurance certificate issued by a company authorized to write insurance in the Commonwealth. This certificate shall indicate that the contractual liability coverage is in force.

12.4 The Contractor shall file the original and one certified copy of all policies with the City within fifteen (15) days after contract award. If the City is damaged by the Contractor's failure to maintain such insurance and to so notify the City, then the Contractor shall be responsible for all reasonable costs attributable thereto.

12.5 Cancellation of any insurance required by this contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and City at least thirty days prior to the effective date thereof, which shall be expressed in said notice.

#### 13.0 CONFLICT OF INTEREST

No member, agent or employee of the City shall, during his/her tenure or one year thereafter directly or indirectly, have any interest in any property to be included in, or any contract for property, materials or services to be furnished or used in connection with, this contract or the proceeds thereof.

#### 14.0 COMPLIANCE WITH LAWS

All work to be performed and wages paid under this specification shall be in accordance with all applicable laws, state or federal, and all applicable ordinances, codes, rules, and regulations of the City of Newton, or any public board or office having any jurisdiction, regulation or control over any work to be done hereunder, including minimum wage rates. In particular, without limitation, the Contractor agrees to comply with all regulations pertaining to approvals for federal and state grants, and with all federal and state environmental laws and regulations. The Contractor agrees to assist in making any submissions to federal or state agencies as may be required in order to meet the requirements in this paragraph.

## 15.0 INDEMNIFICATION

The Contractor agrees to indemnify and save the City harmless from and against any and all costs, losses, expenses, liabilities, damages or claims for damages, including reasonable attorney's fees and expenses, on account of any injury or damage to buildings, improvements, or property of the City or on account of any injury (including death) or damage to any person, persons, firm, corporation or association, or on account of any infringement or claim of infringement of patents, arising out of or resulting from the deliveries provided for or performed under this contract or from any act, omission or negligence of the contractor, his agents, employees, or assigns. The foregoing provisions shall not be deemed to be released, waived or modified in any respect by reason of any surety or insurance provided by the contractor under contract.

## 16.0 FORCE MAJEURE

The City may not hold the Contractor liable for any loss, expense or damage incurred by the City on account of failure of the Contractor to deliver services as specified herein, if that failure is caused by state of war, acts of enemies, expropriation or confiscation of facilities used by the Contractor, or compliance with any law, order, or regulation of any federal, state or municipal governmental authority, if the Contractor shall show that such compliance would impair this ability to perform a material provision of this contract, the Contractor having given the City reasonable notice of such cause.

## 17.0 DISPUTES

All claims, disputes and other matters in question between the City and the Contractor arising out of or relating to this Contract or the breach of it, shall be submitted for resolution to a court of competent jurisdiction in Massachusetts, unless otherwise agreed by the parties. No such action shall be brought, however, until the completion of all Services under this Contract or the earlier termination of this Contract as provided herein, the parties agreeing to negotiate any claims, disputes or other matters in question during the term of this Contract before resorting to litigation. As to all acts or failures to act by either party to this Contract, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events when the other party becomes aware or should have been aware of such acts or failure to act.

## 18.0 GOVERNING LAW

This contract shall be governed by and construed in accordance with Massachusetts Law.

## 19.0 LIABILITY

The Contractor is retained solely for the purpose of and to the extent set forth in this Contract. The Contractor's relationship to the City for the purpose of services to be performed under this Contract shall be that of an independent contractor. The Contractor shall have no capacity or authority to involve the City in any contract or to incur any liability on behalf of the City. In no event shall the City be held liable as an employer or otherwise for any personal injury to or death of the Contractor's principals, employees, agents and/or representatives occasioned by or resulting from the Contractor's performance under this Contract.

## 20.0 LIENS

The Contractor shall cause to be removed from the property of the City any liens or other claims asserted by any person or entity claiming through or under the Contractor and arising out of Services performed under this Contract by such third party.

## 21.0 SEVERABILITY

In the event that any portion of this Contract is held illegal or unenforceable by a court of competent jurisdiction, the parties agree that such invalidity shall not affect the validity of the remaining portions of this Contract and Contractor and the City agree to substitute for the invalid provision a valid provision which most closely approximates the economics and intent of the invalid provision.

## END OF SECTION

**SPECIAL INSTRUCTIONS  
DEPARTMENT OF SENIOR SERVICES  
NEWTON SENIOR CENTER  
FITNESS PROGRAMS**

**INSTRUCTIONS FOR BIDDERS AND BIDDING FORMAT**

1. All bids shall be submitted as a Firm Fixed Fee basis, per Line Item as indicated on the **Bid Form**.
2. The contract will be awarded to the responsive and responsible bidder submitting the lowest Total Annual Cost **per line item**.
3. The City of Newton reserves the right to reject any or all bids, and to award the bid as may be determined to be in the best interest of the City.
4. Attention of bidders is called to the required professional certifications and to proof of compliance regarding certain insurance at the time of award.

**PERSONNEL, EQUIPMENT AND MATERIALS, LOCATION**

1. **The Contractor shall be solely responsible for providing the City with a substitute instructor that shall be held to the same standards as the contractor.**
2. The City shall provide all equipment (i.e., mats, weights, space, tape/cd players, etc.). The Contractor shall provide all their own music (tapes, cd's, etc.).
3. All classes shall take place at the City of Newton Senior Center located at 345 Walnut Street, Newton.

**PAYMENT**

1. The Contractor shall be paid in accordance with the rates specified in the Contractor's bid within thirty (30) days of receipt and approval of a monthly invoice. Payment shall be subject to the City's right to adjust the bill as specified in paragraph two of this section. Invoices should be submitted **to The Department of Senior Services, Attn. Alice Bailey, 345 Walnut St, Newtonville, MA 02460**. The payment of said compensation should be considered complete and exclusive compensation for services rendered. The City shall not assume any additional costs, including but not limited to employment benefits, health benefits, overtime, weekend & holiday pay or other reimbursements.
2. The City reserves the right to deduct from sums due to the Contractor an amount equal to the cost of any work not performed or not performed according to these specifications.

**INDEMNIFICATION AND INSURANCE**

1. The Contractor acknowledges and agrees that it is responsible as an INDEPENDENT CONTRACTOR for all services provided under this Agreement and agrees that it will indemnify, hold harmless and defend the City and its agents and employees from and against all claims, damages, losses and expenses, including attorneys' fees arising out of, or resulting from, the performance of the services to be performed under this Agreement, to the extent that any such claim, damage, loss or expense: 1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and 2) is caused in whole or in part by any negligent or willful act or omission of the Contractor, any of the Contractor's employees or agents, or anyone for whose acts the Contractor may be liable, except to the extent it is caused by a party entitled to Indemnification hereunder.
2. The Contractor shall, within thirty (30) days of notification of the award of the contract, provide the City with a Certificate of Insurance, with amounts and an arrangement of coverage as specified in paragraph 3 of this Section. Said insurance

shall be maintained at all times during the term of the contract. Failure to provide or maintain such insurance shall be grounds for immediate termination of the contract.

3. The Certificate of Insurance shall provide all coverage required in paragraph 12.0 of the General Terms and Conditions of the Contract.

#### PERSONNEL

1. The City of Newton will conduct CORI checks on all individuals whether they are individual or an individual working within an organization/corporation, etc. At the time of review and reference checks the Senior Center will provide you with release forms that you will be required to complete and return.

#### TERMINATION

1. The City of Newton shall also have the right to terminate the contract without prior notice for cause, including unsatisfactory performance of the Contractor.

#### NON-APPROPRIATION

The City shall have the right to terminate the contract at any time during the term of the contract without further liability to the Contractor in the event that funds are not appropriated or otherwise available.

END OF SECTION



**Bid Specifications  
Department of Senior Services  
Newton Senior Center  
Fitness Programs**

Description of Service

The City of Newton's Senior Center provides 7 fitness classes each week to approximately 30 seniors per class approximately 500 seniors each year.. The classes include:

**Aerobics (2 times per week; Tuesday/Friday- 9:00 a.m. – 10:00 a.m. )**

**Muscle Conditioning (2 times per week; Tuesday/Friday- 10:30 a.m. – 11:30 a.m.)**

**Yoga chairs (2 times per week; Monday, 2:00 p.m. – 3:00 p.m. Thursday, 1:00 p.m. – 2:00 p.m. )**

**Yoga mats (1 time per week ; Thursday, 2:00 p.m. – 3:00 p.m. )**

These programs shall be offered at the times specified.

The Senior Center shall be closed during all holidays recognized by the City and no classess will be required on those holidays.

The senior center is seeking bids from qualified fitness instructors to provide all or a portion of the schedule of classes. Award will be made to the lowest responsive and responsible bidder for each line item on the Bid Form. Bidders must be able to provide all scheduled classes in a category to be considered responsive/responsible

Bidder Qualifications

In order to be considered for contract award the bidder must:

- Provide copies of certification of fitness instruction and/or yoga instruction from a recognized fitness/yoga instruction certification organization
- Provide certification of CPR training
- Provide proof of 1-3 years of experience in certified fitness instruction to seniors
- Provide three references from past fitness/yoga instruction positions, one of which needs to reflect experience instructing senior fitness classes
- Proof that as well as fitness/yoga instruction certification continuing education units related to fitness instruction are pursued annually.
- Bidders must complete the Bidder's Qualification and References Form included herein.

Any Bid not providing the above required information shall be deemed non-responsive and will be rejected.

Expectations

Each bidder(s) selected to provide these services shall give permission to administer and be expected to pass a C.O.R.I. Check (a criminal background check) as required under Massachusetts General Law.

Each instructor(s) awarded this contract shall provide a substitute when they are unable to instruct the class themselves. The substitute will be held to the same requirements and expectations that the primary instructor needs to meet. Each bidder, upon award, shall provide the City of Newton with the name, resume, and certifications of the substitute. If the bidder(s) can not provide a substitute you must clearly state that on the Bid Form. If you have identified a substitute and that substitute can not cover your absence, a 48 hours

notice to the Senior Center is mandatory. It is expected that instructors provide modifications to all movements in the class so those participants with varying degrees of mobility have safe options to practice. As needed, it is expected that instructors will assist the Senior Center in administrative/operational functions related to fitness classes, including but not limited to: encourage participants to sign in, encouragement of and collection of class fees/donations, participation in any needed medical emergency response while instructing class.

### **Class Schedule**

#### **Aerobics:**

Tuesday/Friday- 9:00 a.m. – 10:00 a.m.

Exercises are done to music and each student is encouraged and shown how to modify his/her exercise according to individual needs and limits.

#### **Muscle Conditioning**

Tuesday/Friday, 10:30 a.m. – 11:30 a.m.,

Muscle conditioning is a program using free weights (choose 1 lb., 2 lb. or more) and exercbands and tubes to tone muscles and build stamina. This class can be done standing or in a chair and is easily modified.

#### **Yoga (chairs)**

Monday, 2:00 p.m. – 3:00 p.m.

Thursday, 1:00 p.m. – 2:00 p.m.

Yoga (chairs) is our beginners class. Many students remain at this level as it requires less movement. This course takes participants through yoga breathing and to relax their mind and body, leading to inner peace and calm.

#### **Yoga (mats)**

Thursday, 2:00 p.m. – 3:00 p.m.,

Yoga (mats) is our more advanced class for those ready and willing to get down onto the floor and try slightly more challenging movements.

END OF SECTION

**CITY OF NEWTON  
DEPARTMENT OF PURCHASING**

**BID FORM**

- A. The undersigned proposes to supply all materials and services specified below in full accordance with the Contract Documents and Project Manual supplied by the City of Newton entitled:

**INVITATION FOR BID NO. 09-49  
DEPARTMENT OF SENIOR SERVICES  
NEWTON SENIOR CENTER  
FITNESS PROGRAMS**

for the contract price(s) specified below, subject to additions and deduction according to the terms of the specifications.

- B. This bid includes addenda number(s) \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,
- C. The Bidder proposes to furnish and deliver the materials and services specified at the following price(s):

Item	Description	Cost per class	No. of classes per year	Annual Cost
1.	Aerobics classes	\$_____ X	102 classes (2 classes per week)	= \$_____
2.	Muscle Conditioning	\$_____ X	102 classes (2 classes per week)	= \$_____
3.	Yoga chairs	\$_____ X	97 classes (2 classes per week)	= \$_____
4.	Yoga mats	\$_____ X	51 classes (1 class per week)	= \$_____

**Bidders may bid on one or all of the items. Awards will be based on the lowest responsive and responsible bid per line item.**

**COMPANY/PERSON** \_\_\_\_\_

Telephone / FAX #'s \_\_\_\_\_

- D. The undersigned has completed and submits herewith the following documents:

- ☐ Bidder's Qualification Form and References;
- ☐ Provide copies of certification of fitness instruction and/or yoga instruction from a recognized fitness/yoga instruction certification organization
- ☐ Provide certification of CPR training
- ☐ Provide proof of 1-3 years of experience in certified fitness instruction to seniors
- ☐ Provide three references from past fitness/yoga instruction positions, one of which needs to reflect experience instructing senior fitness classes

- ☐ Proof that as well as fitness/yoga instruction certification continuing education units related to fitness instruction are pursued annually.
- ☐ Bidders must complete the Bidder's Qualification and References Form included herein.

- E. The undersigned agrees that, if selected as contractor, s/he will within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the City of Newton, execute a contract in accordance with the terms of this bid. The undersigned hereby certifies that s/he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work and that s/he will comply fully with all laws and regulations applicable to awards made subject to M.G.L. Chapter 30B.

The undersigned further certifies under the penalties of perjury that this bid has been made and submitted in good faith and without collusion or fraud with any other person. As used in this section the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from public contracting or subcontracting in the Commonwealth under the provisions of M.G.L. Chapter 29, Section 29F or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

Date \_\_\_\_\_  
(Name of Bidder)  
BY: \_\_\_\_\_  
(Printed Name and Title of Signatory)  
(Business Address)  
(City, State Zip)  
(Telephone) \_\_\_\_\_ / \_\_\_\_\_ (FAX)  
(E-mail address) \_\_\_\_\_

**NOTE:** If the bidder is a corporation, indicate state of incorporation under signature, and affix corporate seal; if a partnership, give full names and residential addresses of all partners; if an individual, give residential address if different from business address; and, if operating as a d/b/a give full legal identity. Attach additional pages as necessary.

End of Section

**CITY OF NEWTON**

**BIDDER'S QUALIFICATIONS AND REFERENCES FORM**

All questions must be answered, and the data given must be clear and comprehensive. Please type or print legibly. If necessary, add additional sheet for starred items. This information will be utilized by the City of Newton for purposes of determining bidder responsiveness and responsibility with regard to the requirements and specifications of the Contract.

1. FIRM NAME: \_\_\_\_\_
2. WHEN ORGANIZED: \_\_\_\_\_
3. INCORPORATED? ☒ YES ☐ NO DATE AND STATE OF INCORPORATION: \_\_\_\_\_
- \* 4. LIST ALL CONTRACTS CURRENTLY ON HAND, SHOWING CONTRACT AMOUNT AND ANTICIPATED DATE OF COMPLETION:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- \* 5. HAVE YOU EVER FAILED TO COMPLETE A CONTRACT AWARDED TO YOU?  
☐ YES ☐ NO  
IF YES, WHERE AND WHY?  
\_\_\_\_\_  
\_\_\_\_\_
- \* 6. HAVE YOU EVER DEFAULTED ON A CONTRACT? ☐ YES ☐ NO  
IF YES, PROVIDE DETAILS.  
\_\_\_\_\_  
\_\_\_\_\_
- \* 7. LIST YOUR VEHICLES/EQUIPMENT AVAILABLE FOR THIS CONTRACT:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- \* 8. IN THE SPACES FOLLOWING, PROVIDE INFORMATION REGARDING CONTRACTS COMPLETED BY YOUR FIRM SIMILAR IN NATURE TO THE PROJECT BEING BID. A MINIMUM OF FOUR (4) CONTRACTS SHOULD BE LISTED. PUBLICLY BID CONTRACTS ARE PREFERRED, BUT NOT MANDATORY.

PROJECT NAME: \_\_\_\_\_  
OWNER: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_  
DOLLAR AMOUNT: \$ \_\_\_\_\_ DATE COMPLETED: \_\_\_\_\_  
PUBLICLY BID? ☐ YES ☐ NO  
TYPE OF WORK?: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_ TELEPHONE #: (\_\_\_\_) \_\_\_\_\_  
CONTACT PERSON'S RELATION TO PROJECT?: \_\_\_\_\_  
(i.e., contract manager, purchasing agent, etc.)  
\_\_\_\_\_

PROJECT NAME: \_\_\_\_\_  
OWNER: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_  
DOLLAR AMOUNT: \$ \_\_\_\_\_ DATE COMPLETED: \_\_\_\_\_  
PUBLICLY BID? ☐ YES ☐ NO  
TYPE OF WORK?: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_ TELEPHONE #: (\_\_\_\_) \_\_\_\_\_  
CONTACT PERSON'S RELATION TO PROJECT?: \_\_\_\_\_  
(i.e., contract manager, purchasing agent, etc.)  
\_\_\_\_\_

PROJECT NAME: \_\_\_\_\_  
OWNER: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_  
DOLLAR AMOUNT: \$ \_\_\_\_\_ DATE COMPLETED: \_\_\_\_\_  
PUBLICLY BID? ☐ YES ☐ NO  
TYPE OF WORK?: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_ TELEPHONE #: (\_\_\_\_) \_\_\_\_\_  
CONTACT PERSON'S RELATION TO PROJECT?: \_\_\_\_\_  
(i.e., contract manager, purchasing agent, etc.)  
\_\_\_\_\_

PROJECT NAME: \_\_\_\_\_  
OWNER: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_  
DOLLAR AMOUNT: \$ \_\_\_\_\_ DATE COMPLETED: \_\_\_\_\_  
PUBLICLY BID? ☐ YES ☐ NO  
TYPE OF WORK?: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_ TELEPHONE #: (\_\_\_\_) \_\_\_\_\_  
CONTACT PERSON'S RELATION TO PROJECT?: \_\_\_\_\_  
(i.e., contract manager, purchasing agent, etc.)

9. The undersigned certifies that the information contained herein is complete and accurate and hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the City of Newton in verification of the recitals comprising this statement of Bidder's qualifications and experience.

DATE: \_\_\_\_\_ BIDDER: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

## CERTIFICATE OF AUTHORITY - CORPORATE

1. I hereby certify that I am the Clerk/Secretary of \_\_\_\_\_  
(insert full name of Corporation)
2. corporation, and that \_\_\_\_\_  
(insert the name of officer who signed the **contract and bonds.**)
3. is the duly elected \_\_\_\_\_  
(insert the title of the officer in line 2)
4. of said corporation, and that on \_\_\_\_\_  
(insert a date that is ***ON OR BEFORE*** the date the officer signed the **contract and bonds.**)

at a duly authorized meeting of the Board of Directors of said corporation, at which all the directors were present or waived notice, it was voted that

5. \_\_\_\_\_ the \_\_\_\_\_  
(insert **name** from line 2) (insert **title** from line 3)

of this corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

6. ATTEST: \_\_\_\_\_ *AFFIX CORPORATE  
(Signature of **Clerk or Secretary**)\* SEAL HERE*
7. Name: \_\_\_\_\_  
(Please print or type name in line 6)\*
8. Date: \_\_\_\_\_  
(insert a date that is ***ON OR AFTER*** the date the officer signed the **contract and bonds.**)

\* The name and signature inserted in lines 6 & 7 **must** be that of the **Clerk or Secretary** of the \_\_\_\_\_ corporation.

## ATTESTATION

Pursuant to MG c. 62C, § 49A, the undersigned acting on behalf of the Contractor, certifies under the penalties of perjury that, to the best of the undersign's knowledge and belief, the Contractor is in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.\*

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**Signature of Individual or Corporate Contractor (Mandatory)	*** Contractor's Social Security Number (Voluntary) or Federal Identification Number
--	---

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Corporate Officer  
(Mandatory, if applicable)

\* The provision in the Attestation relating to child support applies only when the Contractor is an individual.

\*\* Approval of a contract or other agreement will not be granted unless the applicant signs this certification clause.

\*\*\* Your social security number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended. This request is made under the authority of GL c. 62C, § 49A.



## **CONTRACT FORMS**

The awarded bidder will be required to complete and submit the following documents in order to execute a contract pursuant to this bid.

The forms are provided for informational purposes only.

**None of the following forms are required at the time of bid submittal.**

# OWNER-CONTRACTOR AGREEMENT

CONTRACT NO. \_\_\_\_\_

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand and Eight by and between the CITY OF NEWTON, a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, hereinafter referred to as the CITY, acting through its Chief Procurement Officer, but without personal liability to him, and

hereinafter referred to as the CONTRACTOR.

WITNESSETH: That the parties hereto for the considerations hereinafter set forth agree as follows:

- I. SCOPE OF WORK.** The Contractor shall furnish all labor, materials, equipment and insurance, and perform all work required in strict accordance with the Project Manual entitled:

**DEPARTMENT OF SENIOR SERVICES - NEWTON SENIOR CENTER  
FITNESS PROGRAM  
(Aerobics, Muscle Conditioning, and Yoga ( chair & mats)**

hereinafter referred to as the SPECIFICATIONS, and the Addenda thereto numbered \_\_\_\_\_, and all the Drawings (if any) referred to therein.

- II. CONTRACT DOCUMENTS.** The Contract shall consist of the following component parts, copies of which are attached hereto:

- a. The City's Invitation For Bid #09-49 issued by its Purchasing Department;
- b. Project Manual for **Department of Senior Services, Newton Senior Center Fitness Programs.**
- c. Addenda Numbers \_\_\_\_\_ to the above referenced Project Manual and/or Plans;
- d. The bid of \_\_\_\_\_ dated \_\_\_\_\_ and signed by \_\_\_\_\_, including the Bid Form and Bidder's Qualifications Form and References;
- e. Attestation/Certifications

This Owner-Contractor Agreement, together with the other documents enumerated in this Article 4 form the Contract.

- III. CONTRACT TERM.** The term of this contract shall extend from **March 1, 2009** through **June 30, 2010**, with the option, at the City's sole discretion, **to extend for 1 additional 12 month terms (July 1, 2010 - June 30, 2011)** with no change to the contract price and terms and conditions. Each option to renew shall be subject to appropriation and/or availability of funding.

- IV. AUTHORIZATION OF AND PAYMENT FOR WORK PERFORMED.** The execution of this contract does not in any way constitute a notice to proceed or authorization to perform work. No work shall be commenced unless authorized by a City of Newton Shipping Order specifying work to be performed and bearing a certification by the Comptroller of the City of Newton that funds are available for the work ordered. The Contractor will be paid following accepted completion of the work authorized by Shipping Order in accordance with the prices submitted on the Contractor's Bid Form, and in accordance with the Specifications and Contract. The Contractor will be paid within thirty (30) days of receipt of invoice or acceptance of work whichever date is later.

- V. RESPONSIBILITY FOR THE WORK/INDEMNIFICATION.** The Contractor shall take all responsibility of and for the work, and take all precautions for preventing injuries to persons and property in or about the work and shall hold the City harmless from all loss, cost, damage or expense arising from injuries to persons or property in or about the work. The Contractor shall be responsible for any damage which may be caused by the failure or insufficiency of any temporary works. He shall effectively protect his work and shall be liable for all damage and loss by delay or otherwise caused by his neglect or failure so to do.
- VI. WARRANTY.** The Contractor shall replace, repair or make good, without cost to the City, any defects or faults arising within one (1) year after date of acceptance of work and materials furnished hereunder (acceptance not to be unreasonably delayed) resulting from imperfect or defective work done or materials furnished by the Contractor.
- VII. PATENT INDEMNIFICATION.** The Contractor agrees to assume the defense of and shall indemnify and save harmless the City and all persons acting for or on behalf of it from all suits and claims against them, or any of them, arising from or occasioned by the use of any material, equipment or apparatus, or any part thereof which infringes or is alleged to infringe on any patent rights. In case such material, equipment or apparatus, or any part thereof, in any such suit is held to constitute infringement, the Contractor, within a reasonable time, will at its own expense, and as the City may elect, replace such material, equipment or apparatus with non-infringing material, equipment or apparatus, or remove the material, equipment, or apparatus and refund the sums paid therefor.
- VIII. ASSIGNMENT/SUB-CONTRACTING.** The Contractor agrees that he will not sell, assign, transfer or sublet this Agreement or any part thereof or interest therein without the prior written consent of the City. Any subcontracts entered into by the Contractor shall be submitted to the City for prior approval and the City shall have the right to reject any subcontractor who is considered incompetent or unable satisfactorily to perform that portion of the work involved.
- IX. TERMINATION.** If the work to be done under this Agreement shall be abandoned, or if this Agreement or any part thereof shall be sublet, without the previous written consent of the City, or if the Agreement or any claim hereunder shall be assigned by the Contractor otherwise than as herein specified, or if at any time the City shall be of the opinion, and shall so certify, that the conditions herein specified as to the rate of progress are not fulfilled, or that the work or any part thereof, is unnecessarily or unreasonably delayed, or that the Contractor has violated any of the provisions of this Agreement, the City may terminate this Contract and/or notify the Contractor to discontinue such work or such part thereof as the City may designate, and the City may thereupon by Agreement or otherwise, as it may determine, complete the work, or such part thereof; and for such completion the City for itself or for its Contractor may take possession of and use or cause to be used in the completion of the work thereof any of such materials, apparatus, machinery, implements, and tools of every description as may be found upon said work. Such discontinuance shall not entitle the Contractor, to any claim for damages on account thereof, nor shall it relieve the Contractor of any liability under this Agreement.
- X. LABOR REGULATIONS.** The Contractor agrees that in the performance of this work, he shall comply with all laws of the Commonwealth of Massachusetts having to do with the employment of labor upon municipal work, and all laws applicable to public contracts, which laws are by reference made part hereof.
- XI. PRIORITY OF DOCUMENTS.** In the event of a conflict between the terms of this Agreement and the Specifications, the terms of this Agreement shall prevail.
- XII. GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
- XIII. SEVERABILITY.** The provisions of this Agreement are severable. If any section, paragraph, clause or provision of this Agreement shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall be unaffected by such adjudication and all of the remaining provisions of this Agreement shall remain in full force and effect as though such section, paragraph, clause or provision, or any part thereof so adjudicated to be invalid, had not been included herein, unless such remaining provisions, standing alone, are incomplete and incapable of being executed in accordance with the intent of the parties to this Agreement.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed under seal the day and year first above written.

CONTRACTOR

By \_\_\_\_\_  
Title \_\_\_\_\_

Date \_\_\_\_\_

*Affix Corporate Seal Here*

City funds in the amount of \$ \_\_\_\_\_  
Are available in account number \_\_\_\_\_

I further certify that the Mayor is  
authorized to execute contracts and  
approve change orders

\_\_\_\_\_  
*Comptroller of Accounts*

Date \_\_\_\_\_

CITY OF NEWTON

By \_\_\_\_\_  
*Chief Procurement Officer*

Date \_\_\_\_\_

By \_\_\_\_\_  
*Director of Senior Services*

Date \_\_\_\_\_

Approved as to Legal Form and  
Character

\_\_\_\_\_  
*Assistant City Solicitor*

Date \_\_\_\_\_

CONTRACT AND BONDS APPROVED

\_\_\_\_\_  
*David B. Cohen, MAYOR*

Date \_\_\_\_\_

End of Section